

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARION DIAGNOSTIC CENTER, LLC, et
al.,

Plaintiffs,

v.

BECTON, DICKINSON, AND CO., et al.,

Defendants.

Case No. 3:18-cv-01059

Judge Nancy J. Rosenstengel

**AGREED MOTION TO EXTEND TIME FOR PLAINTIFFS TO FILE
A SECOND AMENDED COMPLAINT AND
TO REQUEST ENTRY OF STIPULATED BRIEFING SCHEDULE**

Plaintiffs Marion Diagnostic Center LLC, Marion HealthCare, LLC, and Andron Medical Associates, by their undersigned attorneys, respectfully request that this Court grant this agreed motion to extend the deadline for Plaintiffs to file an amended complaint and for the parties to brief any forthcoming motions to dismiss that complaint. In support of their request, Plaintiffs state as follows:

1. On November 30, 2018, this Court issued a final judgment dismissing Plaintiffs' operative complaint with prejudice. Dkt. 118. On December 27, 2018, Plaintiffs filed a timely notice of appeal from the Court's judgment. Dkt. 122. In a judgment dated March 5, 2020, the United States Court of Appeals for the Seventh Circuit vacated this Court's November 30, 2018 final judgment and remanded the case to this Court for further proceedings in accordance with the Seventh Circuit's opinion. Dkt. 130-2. On March 27, 2020, the Court of Appeals issued its mandate to this Court. Dkt. 130.

2. The Seventh Circuit's opinion stated that the Plaintiffs "should have an

opportunity” to file an amended complaint in support of their claims against Defendants. Dkt. 130-2 (certified opinion) at 16. Accordingly, this Court entered a text order on April 6, 2020 directing Plaintiffs to file a second amended complaint by June 5, 2020. Dkt. 144.

3. Since the Court’s order, the parties have met and conferred about an appropriate schedule for the filing of Plaintiffs’ second amended complaint and any potential motions to dismiss by Defendants. In light of issues including the complexity of the factual and legal issues raised in this case, the number of parties and counsel involved, and the disruption caused by the ongoing COVID-19 crisis, the parties agree that a reasonable extension of time is warranted for the filing of Plaintiffs’ second amended complaint and of Defendants’ answers or motions to dismiss that amended complaint.

4. Plaintiffs thus respectfully request that the Court so-order the following schedule that has been agreed to among the parties:

- **July 31, 2020:** Plaintiffs file their second amended complaint.
- **October 16, 2020:** Defendants file their answers or motions to dismiss the second amended complaint.
- **December 18, 2020:** Plaintiffs file their briefs in opposition to any motions to dismiss the second amended complaint.
- **January 15, 2021:** Defendants file replies in support of any motions to dismiss to the extent such replies are permitted by Local Rule 7.1(c).

5. The parties agree that this motion shall not constitute waiver of any jurisdictional defenses that may be available under Rule 12 of the Federal Rules of Civil Procedure, any affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure, or any other statutory or common law defenses that may be available to Defendants. The parties further agree that this motion shall not constitute agreement as to whether reply briefs are permitted under the Local Rules in support of any forthcoming motions to dismiss.

6. This is the first request by any party for an extension of time either for the Plaintiffs to file their second amended complaint or for the parties to brief any forthcoming motion to dismiss that complaint. This motion is not made for purposes of delay, but to allow the parties time to adequately address the complex factual and legal issues raised by the Seventh Circuit's opinion and Plaintiffs' forthcoming second amended complaint.

7. All Plaintiffs consent to this motion. All Defendants have been consulted about, and have consented to, this motion.

8. A draft order is attached to this motion and will also be submitted in a format compatible with Microsoft Word to NJRpd@ilsd.uscourts.gov.

Dated: May 19, 2020
Chicago, Illinois

Respectfully submitted,

R. Stephen Berry
Berry Law PLLC
(Admitted *Pro Hac Vice*)
1717 Pennsylvania Avenue, N.W.
Suite 850
Washington, DC 20006
Telephone: (202) 296-3020
Facsimile: (202) 296-3038
sberry@berrylawpllc.com

/s/ Steven F. Molo
Steven F. Molo
Allison Gorsuch
MoloLamken LLP
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 450-6700
Facsimile: (312) 450-6701
smolo@mololamken.com
agorsuch@mololamken.com

Justin M. Ellis
MoloLamken LLP
430 Park Avenue
New York, NY 10022
Telephone: (212) 607-8160
Facsimile: (212) 607-8161
jellis@mololamken.com

Lee Goldsmith, J.D.-M.D.
Goldsmith & Goldsmith, LLP
(*Pro Hac Vice Petition Pending*)
Park 80 West, Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, NJ 07336
Telephone: (201) 429-7892
Facsimile: (201) 291-9428
lee@goldsmithlegal.com

Attorneys for Plaintiffs and Proposed Class Co-Counsel

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**[PROPOSED] ORDER EXTENDING TIME FOR PLAINTIFFS TO FILE
A SECOND AMENDED COMPLAINT
AND ENTERING THE STIPULATED BRIEFING SCHEDULE**

IT IS HEREBY ORDERED, pursuant to the agreement of the parties:

1. The deadline for Plaintiffs to file their second amended complaint is hereby extended to July 31, 2020.
2. The deadline for Defendants to answer or move to dismiss the second amended complaint is hereby extended to October 16, 2020.
3. The deadline for Plaintiffs to file briefs in opposition to any motions to dismiss the second amended complaint is hereby extended to December 18, 2020.
4. In the event that reply briefs in support of any motions to dismiss Plaintiffs' second amended complaint are permitted under this Court's Local Rules, the deadline for such reply briefs is hereby extended to January 15, 2021.

Dated: May 19, 2020

The Honorable Nancy J. Rosenstengel
United States District Judge

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing Agreed Motion to Extend Time for Plaintiffs to File a Second Amended Complaint and to Request Entry of the Stipulated Briefing Schedule to be served on all counsel of record by filing it through the Court's CM/ECF system.

/s/ Steven F. Molo
Steven F. Molo
MoloLamken LLP
300 N. LaSalle St.
Chicago, IL 60654
T: (312) 450 6700
F: (312) 450 6701
smolo@mololamken.com